

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL NEY BERRY,

Plaintiff,

v.

WHOLE FOODS MARKET PACIFIC
NORTHWEST, INC.,

Defendant.

CASE NO. C23-819 MJP

ORDER OF DISMISSAL

The Court issued an Order compelling Plaintiff to produce materials in response to Defendant's discovery requests and to file a certification of completion by March 11, 2024. (Dkt. No. 23.) The Court warned Plaintiff that if he did not file the certification, it would issue an order to show cause why the case should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b). Although Plaintiff did not file a notice of completion, he filed a "Notice of Plaintiff's Inability to Continue Case." (Dkt. No. 24.) In the Notice, Plaintiff states that he can "no longer dedicate himself to this case" and "relinquishes pursuit of the case[.]" (Id.) The Court construes the Notice as an admission that Plaintiff cannot prosecute this action.

1 Defendant has also filed a response to Plaintiff's Notice, asking the Court to dismiss this
2 action with prejudice given Plaintiff's failure to engage in discovery and abide by Court orders
3 concerning the prosecution of the claims. (Dkt. No. 25.) Defendant also argues that Plaintiff's
4 claims would be time-barred if refiled at a later date. (Id.) Defendant's request is consistent with
5 Federal Rule of Civil Procedure 41(b), which states that unless the Court orders otherwise, "a
6 dismissal under this subdivision (b) . . . operates as an adjudication on the merits." Fed. R. Civ.
7 P. 41(b).

8 The Court DISMISSES this action under Federal Rule of Civil Procedure 41(b) for
9 failure to prosecute. Given Plaintiff's inability to prosecute the matter despite commencing
10 discovery, and his apparent wish to abandon the action, the Court finds dismissal with prejudice
11 to be appropriate. The Court therefore dismisses the action WITH PREJUDICE. The Court
12 directs the Clerk to terminate this matter.

13 The clerk is ordered to provide copies of this order to Plaintiffs and all counsel.

14 Dated March 20, 2024.

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16 Marsha J. Pechman
17 United States Senior District Judge
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